

# STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*SONNY PERDUE*  
*GOVERNOR*

*DAVID G. SORRELL*  
*COMMISSIONER*

*SPECIAL EDITION*  
*IMPORTANT NOTICE*  
*FINAL RULEMAKING*

August 15, 2005

# **DEPARTMENT OF BANKING AND FINANCE**

## **FINAL REGULATIONS**

**Adopted August 15, 2005**

To all interested persons:

Notice is hereby given that pursuant to the authority granted to it in the Georgia Administrative Procedures Act, Official Code of Georgia Annotated (O.C.G.A.) Chapter 50-13 and by authority of O.C.G.A. §7-1-61; O.C.G.A. §7-1-663; O.C.G.A. §7-1-1012, and other cited statutes, the following attached rules of the Department of Banking and Finance have been finally adopted on August 15, 2005. They were filed with the Secretary of State on August 15, 2005, and will be effective 20 days following or September 5, 2005.

### **Summary:**

The attached rules were proposed and distributed on June 14, 2005. We received 32 comments on the rules. Twenty-five of those were from individual credit unions, and one from the group representing the credit unions. Two banking groups commented, one money transmitter, and three comments were received from the mortgage industry. Generally, the comments were favorable. In many cases, clarification of the Department's intent was requested by making minor changes to wording. Without making substantive changes, the Department has attempted in these final rules to satisfy the varying requests for clarity and conformity to relevant statutes. Not all requests were granted, and there was some difference of opinion among commenters about how a rule should be changed. The Department believes these final rules encourage safety and soundness, safe and fair mortgage lending, and conform to the law. Following is a description of changes made in response to comments. The Department appreciates all of the comments received. This set of rules is your copy of the final rules.

### **MORTGAGE RULES**

#### ***80-11-1-.05 Employee Background Checks; Covered Employees.***

Comments from the mortgage industry indicated that there was some confusion about to whom the background information should be submitted. Employers must obtain background information on their employees. They have 90 days to obtain satisfactory information, but the rule requires employers to promptly submit the necessary information to law enforcement (within 10 business days).

Two additions to Subsection (1) were made to clarify that information must be submitted to law enforcement. Questions were raised as to how to prove such submission was made. The Department will review the receipts or other indicators and should be able to determine compliance from those.

***80-11-2-.03 Mortgage Loan Transaction Journal.***

Questions were raised about who the Department intended to target in Subsection (1)(c). The Department wanted to know, in the mortgage loan transaction journal, whose name was on the application and that that person was responsible for the information on the application. The wording was changed to indicate that intent and clear up any confusion.

***80-11-4.01 Initial Experience and Education Requirements; Continuing Education.***

One commenter felt the continuing education requirements were overly burdensome. The Department believes that the prevalence of mortgage fraud in the state warrants diligent efforts to educate the providers who deal with consumers on a daily basis. The Department surveyed other states, and although 12 hours is on the high end, four other states require the same number of hours, and three of those four are southeastern states.

Other comments indicated concern that a fine or administrative action could result when a broker decided not to renew a license and therefore did not make an application. Subsection (7)(g) was corrected to indicate that any fine or action for the subsequent year only applied to those who were renewing their license for that period. For the 2007-2008 year, continuing education requirements must be met by all brokers before April 1, 2007, if the broker makes an application to renew for the 2007-2008 year.

Finally, one commenter indicated that its lender or affiliate may wish to provide the continuing education. If that provider is approved by the Department, they may offer the continuing education. Additions were made to Subsection (7)(c) to indicate this type of provider would be acceptable. All providers need to be approved initially by the Department; their instructor/presenters do not. Such approval is in place until withdrawn by the Department,

## **ADOPTED RULES**

### **80-11-1-.05 Employee Background Checks; Covered Employees.**

(1) As required by §7-1-1004(f), applicants and licensees must complete background checks on all covered employees. Covered employees include those employees who physically work in the state of Georgia and who may enter, delete or verify any information on any mortgage loan application form or document. Employees of a licensee or applicant who are not involved in the mortgage loan business are not covered employees. Background checks on all covered employees must be completed and found satisfactory by the applicant or licensee within 90 days of the initial date of hire. Employers should submit background information to the proper law enforcement authorities promptly upon initial hire in order to meet the 90 day requirement. The department will expect employers to submit such information to such authorities within 10 business days of initial hire. If the 10 business day filing requirement is not met and an employee is found to be disqualified under Code Section 7-1-1004, the employer may be subject to a \$1000 fine.

(2) As used in §7-1-1004(e), the term “mortgage loan document” shall mean any prospective borrower’s personal electronic or printed information and documents, including but not limited to bank statements, W-2 forms, income tax returns, employment records, and other personal financial information required to be submitted in the course of making an application for a mortgage loan. It would also include documents maintained and generated by the licensee in the course of the application and administration of the mortgage loan, including but not limited to electronic or printed/written information on the mortgagor and their loan, including personal and loan database information, payments and payment history information, past due reports and schedules, coupon books, information generated for tax purposes, including escrow information, and any other information generated which would include the financial and loan history of the mortgagor. Documents would also include computer displays of personal and mortgage loan information on an individual borrower or client which may be disseminated by the licensee’s personnel in the course of verifying information for customers and other business related inquiries.

(3) Applicant’s and licensee’s requests for background checks are handled by the Georgia Crime Information Center (GCIC) following their rules and regulations (See also Code Section 35-3-34). Background checks must be full GCIC checks following that agency’s rules and regulations and must not have any time period limitations or restrictions in the search criteria. Any fees charged by GCIC for processing background checks must be paid by the applicant or licensee. The background checks may be arranged for through a local law enforcement office, so long as the background check is done by GCIC.

(a) If the information from the background check is unclear or incomplete, appears to address or makes reference to a felony conviction, or indicates that the employee has a criminal record in any state other than Georgia (“multi-source offender”), the applicant or licensee must immediately submit two sets of fingerprints of the person, along with the applicable processing fee and any additional information the department may require to complete an expanded background investigation. A money order or certified check for \$30.00 made payable to the department shall be submitted with the cards in order to have the cards processed. Applicant or licensee shall discuss the Georgia Residential Mortgage Act’s legal requirements for employment with the subject employee.

(b) An employee may remain employed by the applicant or licensee pending results of a fingerprint follow up investigation if no felony convictions appear on the GCIC report. If the employee is found to have disqualifying conviction data according to O.C.G.A. §7-1-1004(d), or if the applicant or licensee knows that a disqualifying conviction is present, the applicant or licensee must immediately take action to



## **80-11-2.02 Minimum Requirements for Books and Records.**

(1) Any person required to be licensed or registered under Article 13 ("licensee" or "registrant") must maintain the following books, accounts and records:

- (a) Copies of all disclosure documents required by Rule 80-11-1-.01;
- (b) Samples of advertisements as required by Rule 80-11-1-.02;
- (c) Copies of all written complaints by customers and written records of disposition;
- (d) Copies of examination reports prepared by any agency, division or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;
- (e) Copies of reports required to be prepared and/or submitted by the licensee or registrant to any agency, division, or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;
- (f) Copies of all federal withholding tax forms (W-2's) and 1099 forms filed by the licensee or registrant with the Internal Revenue Service on behalf of individuals employed by the licensee or registrant in its mortgage brokerage and/or lending business or on behalf of individuals acting as independent contractors in the mortgage brokerage and/or lending business of the licensee or registrant;
- (g) A general ledger and subsidiary records sufficient to produce, when requested by the department, an accurate monthly statement of assets and liabilities and a cumulative profit and loss statement for the current operating year.
- (h) All checkbooks, bank statements, deposit slips and canceled checks which pertain to the mortgage brokerage and/or lending business of the licensee or registrant;
- (i) Supporting documentation for all expenses and fees paid by the mortgage broker on behalf of the customer, which documentation indicates the amount paid and the date paid;
- (j) Copies of all credit report bills received from all credit reporting agencies for the most recent five year period;
- (k) Documentation to indicate a consumer had a choice of attorney, if attorneys' fees are intended to be excluded from a points and fees calculation under the Georgia Fair Lending Act;
- (l) An indication of whether each loan has points and fees of 5% or more, as calculated under the Georgia Fair Lending Act, and
- (m) Documentation to support the source and purpose for each receipt of monies in any form in an amount greater than \$100 and documentation to identify the recipient and purpose of each payment of monies in any form in an amount greater than \$100 by the licensee or registrant in its mortgage brokerage and/or lending business in order that the receipts may be reconciled to bank deposits and to books of the licensee or registrant.

(2) Failure to maintain the books, accounts and records required under paragraph (1) above may result in suspension of the license or registration or other appropriate administrative action and will subject the licensee or registrant to fines in accordance with regulations prescribed by the department.

Authority Ga. L. 1993, p. 543; O.C.G.A. §7-1-61; §7-1-1012.

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### **80-11-2-.03 Mortgage Loan Transaction Journal.**

(1) Any person who is acting as a mortgage broker and who is required to be licensed under Article 13 of Title 7, whether as a broker or a lender ("licensee"), shall maintain a journal of mortgage loan transactions which shall include, at a minimum, the following information:

(a) Full name of proposed borrower and all co-borrowers, and their social security number(s);

(b) Date customer applied for the mortgage loan;

(c) Name of the loan officer responsible for the loan application whose name also appears on the application; and

(d) Disposition of the mortgage loan application and date of disposition. The journal shall indicate the result of the loan transaction. The disposition of the application shall be categorized as one of the following: loan closed, loan denied, application withdrawn, application in process or other (explanation).

(2) A complete mortgage loan transaction journal shall be maintained in the principal place of business. The journal shall be kept current. Records may be kept at a branch but the principal place of business must have a current journal updated no less frequently than every seven (7) days. The failure to initiate an entry to the journal within seven (7) business days from the date of the occurrence of the event required to be recorded in the journal shall be deemed a failure to keep the journal current.

(3) Failure to maintain the mortgage loan journal or to keep the journal current (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension or revocation of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the department.

(4) Loan processors who are required to be licensed shall be required to keep a mortgage loan transaction journal to the extent they receive information that is required by law or rule to be in the journal. Such journal shall at a minimum include for each loan the full name of the borrower(s), the name of the broker or lender for whom the processing was performed and the dates the loan application was received and returned to such lender or broker. If a processor performs other duties of a broker aside from processing the loan, the processor/broker shall be responsible for keeping the same information as a broker, as provided in subsection (1) of this rule.

Authority Ga. L. 1993, p. 543; O.C.G.A. § 7-1-1012.

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**80-11-2.05 Repealed. Reserved.**

Authority O.C.G.A. §7-1-61; §7-1-1012.

**80-11-3.01 Administrative Fines.**

(1) As authorized under Article 13 of Chapter 1 of Title 7, Code Sections 7-1-1018(g) and 7-1-1005(d) the department establishes the following fines and penalties for violation of the Georgia Residential Mortgage Act (“GRMA”) or its rules. Except as otherwise indicated, these fines and penalties apply to any person who is acting as a mortgage lender or broker and who is required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated ("licensee" or "registrant"). The department, at its discretion, may waive or modify a fine based upon the gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

(2) All fines levied by the department are due within 30 days from date of assessment and must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, or reapplication for a license or registration, or any other activity requiring departmental approval.

(3) All fines collected by the department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in Code Section 7-1-1018(d).

(4) Dealing with Unlicensed Persons. Any licensee or registrant or any employee of either who purchases, sells, places for processing or transfers (or performs activities which are the equivalent thereof) a mortgage loan or loan application to or from a person who is required to be but is not duly licensed under the GRMA shall be subject to a fine of \$1,000 per transaction and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.

(5) Relocation of Office. Any licensee who relocates their main office or any additional office and does not notify the department within 30 days of the relocation in accordance with Code Section 7-1-1006(e) shall be subject to a fine of \$500.

(6) Unapproved Offices. In addition to the application, fee and approval requirements of Code Section 7-1-1006(f), any licensee who operates an unapproved branch office shall be subject to a fine of \$500 per unapproved branch office operated and their license will be subject to revocation or suspension;

(7) Change in Ownership. Any person who acquires twenty-five (25) percent or more of the capital stock or a twenty-five (25) percent or more ownership of a licensee without the prior approval of the department in violation of Code Section 7-1-1008 shall be subject to a fine of \$500 and their license or registration will be subject to revocation or suspension;

(8) Doing Business Without a License or in Violation of Administrative Order. Any person who acts as a mortgage broker or mortgage lender prior to receiving a current license or registration required under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of \$1,000 per transaction and their mortgage lender or broker application will be subject to denial or their license or registration will be subject to revocation or suspension.

(9) Hiring a Felon. Any licensee or registrant who hires an employee who is a felon as described in Code Section 7-1-1004(d) and if this employee has not complied with the remedies provided for in Code Section 7-1-1004(d) for each conviction before such employment, may be fined \$5,000 per such employee and their license or registration will be subject to revocation or suspension.

(10) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business. Any licensee or registrant who employs any other person against whom a final cease and desist order has been issued within the preceding three (3) years, if such order was based on a violation of Code Section 7-1-1013 or based on the conducting of a mortgage business without a required license or exemption, or whose license has been revoked within three (3) years of the date such person was hired pursuant to Code Section 7-1-1004(g) shall be subject to a fine of \$1,000 per such employee and their license or registration will be subject to revocation or suspension;

(11) Books and Records Violations. If the department, in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records according to the requirements of Code Section 7-1-1009 and Department of Banking and Finance Rule Chapter 80-11-2, such licensee or registrant may be subject to a fine of \$1,000 for each violation of a books and records requirement listed in Rule Chapter 80-11-2.

(12) Maintenance of Loan Files. Any person who is required to be licensed under Article 13 as a mortgage broker or any lender acting as a broker who fails to maintain a loan file for each mortgage loan transaction as required by Rule 80-11-2-.04 or who fails to have all required documents in such file shall be subject to a fine of \$1,000 per file not maintained or not accessible, or per file not containing required documentation.

(13) Payment of \$6.50 fees. Any person who acts as the collecting agent at a closing of a mortgage loan transaction subject to the Georgia Residential Mortgage Act, is liable for payment of the \$6.50 fee to the department, pursuant to Code Section 7-1-1011 and Rule 80-5-1-.04. Any remittance of the \$6.50 fees that is received after it is due shall subject the person to a late fee of \$1,000 for each due date missed. If the department finds that a person has not, through negligence or otherwise, submitted \$6.50 fees within six months of the due date, it may impose an additional \$1,000 fine for failure to remit fees. Repeated failure to submit \$6.50 fees may be grounds for revocation of license.

(14) Repealed. Reserved.

(15) Reporting of Violation of Law or Discharge of Employee for Same. Any person required to be licensed or registered under Article 13 as a mortgage lender or broker, who fails to report prohibited acts or the discharge of employees for dishonest acts, pursuant to O.C.G.A. Code Section 7-1-1007(d) shall be subject to a fine of \$1,000 per act not reported in writing to the department within 10 days of knowledge of such act.

(16) Prohibited Acts. Any person who is required to be licensed or registered under Article 13 as a mortgage broker or mortgage lender who violates Paragraph (1) or (2) of Code Section 7-1-1013 of Article 13 shall be subject to a fine of \$1,000 per violation or transaction that is in violation. Misrepresentations as defined in Code Section 7-1-1000 are subject to fine and include but are not limited to: (i) inaccurate or false identification of applicant's employer; (ii) significant discrepancy between applicant's stated income and actual income; (iii) omission of a loan to applicant, listed on loan application, which was closed through same lender or broker; (iv) false or materially overstated information regarding depository accounts; (v) false or altered credit report; and (vi) any fraudulent or unauthorized document used in the loan process. A fine of \$1,000 shall be assessed for any other

violation of Code Section 7-1-1013. The department shall upon written request provide evidence of the violation.

(17) Branch Manager Approval. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender shall be subject to a fine of \$500 for operation of a branch with an unapproved branch manager and the license will be subject to revocation or suspension. No such fine shall be levied while department approval is pending if timely application for approval is made pursuant to Rule 80-11-1-.04.

(18) Education and Experience Requirements. Any licensee subject to the experience and education requirements who fails to meet such requirements shall be fined \$1,000 for operating a mortgage business without meeting licensing standards, and their license or registration will be subject to revocation or suspension.

(19) Failure to Fund. The GRMA in O.C.G.A. §7-1-1013(3) prohibits failure “to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.” If the department finds, either through a consumer complaint or otherwise, that a lender or a broker acting as a lender has failed to disburse funds in accordance with closing documents, which include legally binding executed agreements indicating a promise to pay and a creation of a security interest, a fine of \$5,000 per transaction may be imposed.

(20) Advertising. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender who violates the regulations relative to advertising contained in Section 7-1-1016 O.C.G.A. or the advertising requirements of department Rule 80-11-1-.02 shall be subject to a fine of \$500 for each violation of law or rule.

(21) Failure to Submit to Exam. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the department) shall be revocation of the license or registration and a \$5,000 fine. Refusal shall be determined according to department examination policies and procedures, but shall require at least two attempts to schedule an exam.

(22) Net Worth. Assets shown on the books of the licensee and used to determine the net worth of the licensee that are not actually held or recorded in the name of the licensee but in the name of an owner or affiliate or any non-related company or person will result in a fine of \$1,000 per asset determined ineligible.

(23) Repealed. Reserved.

(24) Background Checks. Any licensee who fails to perform background checks on covered employees in accordance with the provisions of Code Section 7-1-1004(d), (e) and (f) shall be subject to a fine of \$1,000 for each employee on whom the required background check was not conducted.

(25) Change in Officers. Any licensee who fails to notify the department of a change in principals of the company without the proper approval of the department in violation of Code Section 7-1-1006(e) shall be subject to a fine of \$500.

(26) Georgia Fair Lending Act. Any person who is required to be licensed or registered under Article 13 as a mortgage broker or mortgage lender who violates any provision of Chapter 6A of Article 13, the Georgia Fair Lending Act, shall be subject to a fine of \$1,000 per violation or transaction that is in violation and their license will be subject to revocation or suspension.

(27) Consumer Complaints. Any licensee or registrant who fails to respond to a consumer complaint or fails to respond to the department within the time periods specified in the department's correspondence to such person shall be subject to a fine of \$1,000 for each occurrence. Repeated failure to properly respond to consumer complaints may result in revocation of license.

Authority O.C.G.A. §7-1-61; §7-1-1012.

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#### **80-11-4-.01 Initial Experience and Education Requirements; Continuing Education.**

(1) Subject to the exceptions below, any mortgage broker license issued, reinstated or renewed after July 1, 2000 to an applicant, shall be subject to the requirements for experience or education. Such requirements shall apply to natural person applicants, or if to other entities or persons, to the operating manager who administers the operations in this state (collectively, "applicant").

(2) Applicants for a new license or for reinstatement of a previous license shall elect and meet either the experience or the education requirements before a license will be issued or reinstated.

(3) Exception for certain licensees for initial education or experience requirements.

(a) Any mortgage broker license issued to an applicant prior to July 1, 2000, which license remains continuously valid without interruption until renewed on July 1, 2001, shall be subject to either one year of verifiable experience or applicant must meet the education requirements in this rule.

(b) Applicants for renewal eligible for this exception, in the case of a natural person, need only state on the application that the license was issued on or before July 1, 2000 and has remained continuously valid without interruption since July 1, 2000. In the case of other entities or persons, applicant must demonstrate that the current operating manager has completed either one year of experience, verified according to this rule, or the education requirements.

(4) Experience Requirements:

(a) Applicant must complete two (2) years of verifiable experience working full time for a licensed mortgage broker or lender.

(b) Experience shall consist of directly soliciting, processing, placing and negotiating mortgage loans for others.

(c) The following information must be submitted at the time of application or renewal by an applicant who wishes to qualify by using experience:

1. Letter on letterhead from previous or current employer certifying completion of two (2) years work experience directly soliciting, processing, placing, and negotiating mortgage loans for others. Telephone number of employer must be provided;

2. Copy of IRS form W-2 for the tax years covering the experience requirement;

3. Completed and signed IRS form 4506 which enables the department to verify the W-2, and;
4. Other documents or information required by the department necessary to verify completion of the experience requirement. Experience requirement may be verified by the department directly with the employer and tax authorities.

(d) If applicant's experience is received from an employer not required to be a Georgia Residential Mortgage Act licensee, such applicant must also complete four (4) hours of education provided by an approved school in Georgia, which education specifically covers the Georgia Residential Mortgage Act and rules and regulations of the department.

(5) Initial Education Requirements:

(a) Applicant must complete a minimum of 40 course hours of prescribed courses from a department approved provider of mortgage training courses. Courses will deal with obtaining a basic understanding of technical mortgage terms, elements of the mortgage brokering process, federal law, applications and required documentation, and shall include a minimum of four (4) course hours on Georgia law, rules and regulations. Beginning January 1, 2005, at least one of the remaining 36 hours shall be focused on fraud detection and prevention in the mortgage industry.

(b) Applicant must submit proof of completion of the required training courses in the form of a certificate of completion issued by a department approved provider of mortgage education courses. This requirement may be verified by the department directly with the provider. The department will make a list of such providers available on its website.

(6) Experience requirements must have been completed within the three (3) calendar year period immediately prior to the date of approval of the license. Initial education requirements must have been completed within the one (1) calendar year period prior to the date of approval.

(7) Continuing Education. Applicants for renewal of a broker's license shall meet the following continuing education requirements.

(a) Applicant must complete on an annual basis and prior to April 1 each year a minimum of 12 hours of continuing education dealing with elements of the mortgage brokering process, federal law, federal rules and regulations, Georgia law, Georgia rules and regulations, applications and required documentation, fraud, ethics or other topics pertinent to the operation of a mortgage brokering business in Georgia. At least one hour shall be concentrated on fraud detection and prevention.

(b) Except as provided in this rule, continuing education must be completed with a department approved provider of mortgage training classes.

(c) Seminars, courses or classes sponsored and approved by mortgage-related state and federal regulatory agencies, the National Association of Mortgage Brokers (NAMB), state and federal regulated lenders and their affiliates or professional associations, all of which must be recognized by the department as proper providers of education requirements ("approved providers"). Requirements may be satisfied at monthly association meetings, conventions, seminars or through electronic means provided the subject meets the requirements of this rule. For purposes of continuing education, instructors and speakers at seminars, conventions or classes sponsored by approved providers will not be required to seek department approval as approved providers of mortgage training classes. Education providers shall assign a certificate number to each attendee of a seminar, course or class. In state providers must keep lists of attendees for at least two years.

(d) Each licensed broker must maintain a listing of the courses completed or seminars attended, the date attended, the name of the instructor or speaker, the name of the sponsoring association, the course agenda and the credit hours earned for each course or seminar. Credit hours may not be earned or approved in less than one hour increments. Such information may be requested as part of the renewal application.

(e) The department will not be required to verify that each applicant has completed the required continuing education hours prior to issuance of a renewal license. However, the department may at any time and at its discretion select any number of renewal applications to verify that the continuing education requirements have been met. Verification of continuing education hours may be performed as a part of the examination process. Licensees must maintain documentation for five years that verifies the continuing education hours attained. The department may request proof of attendance or verification from the applicant, sponsor, instructor or speaker.

(f) The department may at its discretion accept continuing education hours completed after April 1, but prior to June 30 of each year as part of the license renewal requirement. However, licensees/applicants that fail to attain at least 12 continuing education hours prior to April 1 of each year will be subject to a \$1,000 fine.

(g) Upon submitting an application to renew license, failure to complete 12 continuing education hours before April 1 together with failure to complete the hours by June 30 with payment of the \$1,000 fine shall result in inability to renew the license, or other administrative action.

(h) For purposes of continuing education requirements “applicant” shall mean an individual owner of the licensee, or a person designated and employed by the licensee as the primary supervisor or manager of the licensee’s mortgage business. The intent of the rule is that the continuing education must be obtained by a person who directs the affairs of the mortgage business.

Authority O.C.G.A. § 7-1-1012; § 7-1-1004.

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#### **80-11-4-.02 Approved Schools.**

(1) A school or provider (“school”) that wishes to be approved by the department to offer courses eligible to satisfy the mortgage broker education requirement shall apply to the department for approval. Only approved schools may provide such courses.

(2) An approved school must offer credit hours in courses directly related to the mortgage broker process. A list of the required areas of coverage necessary to satisfy the education requirement will be published by the department and may be revised from time to time as the need demands.

(3) An approved school must issue a certificate of completion to each person attending, and must have standards for attendance and test taking and a reasonable method to determine attendance. The school must provide to the department a list of all persons successfully completing the required credit hours.

(4) All approved schools must have qualified instructors, meeting standards established by the department, which will be available to the school upon request.

(5) An approved school's official must be available to the department to contact in order to verify completion of education.

Authority O.C.G.A. § 7-1-1012; § 7-1-1004.

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**80-11-4.06 Wholly Owned Subsidiaries of Lenders; Notification Statement; When Registration Required.**

(1) A wholly owned subsidiary of a lender that is a federally insured financial institution (no common stock or voting stock owned by other than a financial institution) is exempt from licensing under the Georgia Residential Mortgage Act, provided it keeps a current notification statement on file with the department.

(2) A notification statement shall be updated by the entity should any information on the most recently submitted notification statement change. Updated notification statements shall be submitted to the department by April 1 of each year. No fee is applicable.

(3) Should the information on the statement be incorrect and should the department discover that Georgia consumers cannot reach a representative or their complaints are not being resolved promptly and fairly, the subsidiary will be notified of their loss of exempt status and their subsequent classification as a registrant, subject to all of the applicable requirements, fees and fines.

Authority O.C.G.A. § 7-1-1012; § 7-1-1001; § 7-1-1003.4.

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**80-11-4.08 Restrictions on Employment and Licensing.**

(1) No person who has been an officer, director, partner or ultimate equitable owner of a licensee that has had its license revoked, denied or suspended, may perform any of those roles at another licensee or registrant for three years from the date of the final order.

(2) Felony convictions; restrictions on the employee and the licensee:

(a) Code Section 7-1-1004 provides that no person employed by or directing the affairs of any licensee may be a convicted felon. Licensees are obligated by that statute to do their own background checks on covered employees. Licensees, however, are responsible to see that no convicted felons are employed or direct the affairs of their business. The department administers fingerprint checks on officers and directors and others where needed.

(b) The law in Code Section 7-1-1004 provides for remedies to "cure" a prior felony. They include a pardon and a restoration of rights. These remedies must be completed and in place prior to employment. Hiring or continuing to employ a felon subjects a licensee to revocation of their license.

(c) If a licensee discovers that an employee or director/officer is a felon who has not satisfactorily "cured" the conviction, the violation of Code Section 7-1-1004 must be immediately corrected or the license will be subject to revocation. Such individuals with felony convictions are ineligible for an

employee exemption and are in violation of Code Section 7-1-1019, also a felony, and Code Sections 7-1-1019, 7-1-1004 and 7-1-1002. The licensee employer is in violation of Code Sections 7-1-1004 and 7-1-1002.

(d) A cease and desist order to a person for failure to meet the employee exemption due to a violation of the felony provisions of Code Section 7-1-1004 shall become final in 30 days without a hearing. Code Section 7-1-1018(a). Such a person must show within those 30 days, by certified court documents that the record is erroneous, or, that the “cure” provisions in Code Section 7-1-1004 were completed prior to employment, in order to stop the order from becoming final. In the event such proof is provided, the order will be rescinded.

(e) Cease and desist orders may be issued against persons required to be licensees or registrants or against employees of those parties. All of the provisions of Code Section 7-1-1018, including injunction, apply to actions against all such persons.

Authority O.C.G.A. §7-1-61; §7-1-1012.